IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No.283/2006

Date of decision 10.7.2007

Jagar Nath and others …Petitioners

Vs.

Director, Consolidation of Holdings, H.P. and others.

…Respondents

Coram:

The Hon'ble Mr.Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioner: Mr. Subhash Sharma, Advocate.

For the Respondents : Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Mrs.Meenakshi Sharma, Deputy A.Gs. for respondents No.1.

Mr. Anuj Nag, Advocate, for Respondent No.2 & 3.

Rajiv Sharma,J.

The petitioner had assailed Annexure P-2 dated 2nd February, 2006 passed by the Director Consolidation of Holdings, Himachal Pradesh under section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 in case No. 122/2004.

The brief facts necessary for the adjudication of this petition are that the consolidation proceedings were initiated as per the provisions of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 on the basis of which the rights of the parties were crystallized as per Annexures P-3 and P-4 i.e. *jamabandis* for the year 1987-88. The respondents No.2 and 3 filed a revision petition under section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 against the present petitioners on the ground that *khasra* No. 456 was the

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

first major portion but the same has wrongly been allotted to the present petitioner during the consolidation. They had prayed that *khasra* No. 456 may be re-allocated to them being the first major portion. The Director Consolidation accepted the revision petition on 2.2.2006 and had directed that the amendments as per the order be incorporated in the revenue record.

Mr. Subhash Sharma, Advocate had strenuously argued that after the consolidation proceedings were held in accordance with the provisions of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971, the objections were called and thereafter the repartition had taken place as per the Rules also. Mr. Sharma had drawn the attention of this Court to Annexure P-3 and P-4 to strengthen his arguments that on the basis of the settlement proceedings the necessary revenue entries were incorporated in the record of rights. He had further contended that the Director Consolidation of Holdings could not have passed the order after a period of more than 17 years and the expression at any time in section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 means reasonable time.

The learned Advocate General had supported the order dated 2.2.2006.

Mr. Anuj Nag, Advocate appearing on behalf of the respondents No. 2 and 3 had submitted that the order has been passed within a reasonable time and the same is liable to be upheld.

I have heard the parties and perused the record.

The Court had also directed the State to produce the entire record on 28.6.2007. Consequently the record was produced by the State today for the perusal of the Court. It has come in the order dated 2.2.2006 that the A.C.O. was directed to visit the spot and the report was submitted by the ACO which was prepared in the presence of the parties. The Court

had perused the report of the ACO, which was at page 17 of the record produced before the Court. The ACO might have visited the spot but no presence of the parties had been marked in his report. Accordingly what has been stated in order dated 2nd February, 2006 to the effect that the ACO had visited the spot in the presence of the parties is factually incorrect. The Director could not have taken into consideration the report furnished by the ACO which was prepared in the absence of the right holders.

The contention of Mr. Subhash Sharma, Advocate that the order has been passed by the Director after a period of more than 17 years is to be considered in the facts and circumstances of this case. The Consolidation proceedings were admittedly initiated as per the provisions of law and on that basis the entries were incorporated in the record of rights as is evident from Annexures P-3 and P-4. These entries are of the year 1987-88. It clearly denotes that the rights of the parties have crystallized 17 years back. Though the expression used in section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 for exercising the jurisdiction by the State is at any time, but the same cannot be stretched to infinite period. The power vested under section 54 of the H.P. Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 is to be exercised within a reasonable time. The period of 17 years cannot be termed as reasonable and accordingly the order passed after a period of 17 years is vitiated. The Court has considered the meaning of connotation ‘at any time’ in case titled as ***Malkiat Singh Vs. State of H.P. and others,*** CWP No. 288/2002 of even date and has held that the exercise of powers under sub section (3) of Section 20 of the H.P. Ceiling on Land Holdings Act, 1972 after a period of 11 years was not reasonable.

The upshot of the above discussion is that the order passed by the Director, Consolidation of Holdings after a period of more than 17 years is vitiated. The report of the ACO was prepared without associating the right holders and the same could not have been made basis for carrying out amendments in the revenue record as per order dated 2nd February, 2006.

Accordingly the writ petition is allowed. The Annexure P-2 dated 2.2.2006 is quashed and set aside. There shall be no order as to costs.

(Rajiv Sharma), J.

July 10, 2007
Awasthi